

## **Inquiry into volunteering in Queensland**

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# Workplace Health and Safety Queensland

*Local Government, Small Business and Customer Service*

*Committee inquiry into volunteering in Queensland*

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## Executive Summary

Workplace Health and Safety Queensland, within the Office of Industrial Relations, Department of State Development, Infrastructure and Planning, is Queensland's workplace health and safety regulator.

This submission provides information to inform the Local Government, Small Business and Customer Service Committee's inquiry into volunteering about the regulatory framework for protecting and supporting volunteers, as well the rights and responsibilities of volunteers and organisations or associations engaging volunteers under the *Work Health and Safety Act 2011* (Qld) (WHS Act).

One of the key issues relevant to the Committee's inquiry is that many of Queensland's volunteers may actually be *workers* for the purposes of the WHS Act.

This submission explains the various definitions relevant to volunteering under the WHS Act, including to distinguish between those people working for volunteer associations and those working for businesses or undertakings. The submission confirms that volunteers working for an organisation, such as not-for-profit organisation or government entity, may be regarded as workers and must adhere to the same health and safety duties as paid employees, as well as being owed the same protections as all other workers under the WHS Act.



## 1. Workplace Health and Safety Queensland

Workplace Health and Safety Queensland (WHSQ), within the Office of Industrial Relations, Department of State Development, Infrastructure and Planning, is committed to working with the Queensland community to reduce work-related fatalities, serious injuries and illnesses, and make it easier to do business safely.

As the regulator of workplace health and safety, WHSQ is responsible for administering the *Work Health and Safety Act 2011* (Qld) (WHS Act), *Work Health and Safety Regulations 2011* (Qld) (WHS Regulations) and codes of practice.

To fulfill our role, WHSQ works with industry and businesses to create a safe and healthy culture in Queensland workplaces. Our purpose is to improve workplace health and safety and reduce the risk of work-related fatalities, injuries and diseases. We do this by administering workplace health and safety laws, investigating work-related fatalities and serious injuries, taking legal action when workplace health and safety laws are broken and educating workers and employers on their legal obligations.

The role of WHSQ is expansive and includes addressing matters where work activities present risk to members of the public.

WHSQ welcomes the opportunity to provide information to the inquiry into volunteering in Queensland about the rights and responsibilities of volunteers and persons conducting a business or undertaking under the WHS Act.



## 2. Introduction to volunteering under the WHS Act

Volunteers perform a range of different activities in the community, including:

- undertaking voluntary work for a business as part of a work experience program;
- undertaking voluntary work or activity for a not-for-profit association;
- voluntarily serving as a director of a company; or
- voluntarily serving as an officer in an unincorporated association.

The workplace health and safety rights and obligations of a volunteer, and the organisation they are volunteering for, depend on a range of factors.

A person who is traditionally called a **volunteer** (e.g. someone who volunteers for the State Emergency Service) **may be considered a worker for the purposes of the WHS Act**.

Whether or not a volunteer is considered a worker under the WHS Act depends on the structure and type of organisation the person volunteers for.

To understand the operating context of volunteers and workers and their rights and obligations, and any workplace health and safety duties relating to volunteers, the WHS Act sets out the following key definitions.

### Volunteer

Under schedule 5 of the WHS Act, a **volunteer** is defined as a “person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses).”<sup>1</sup>

Although not defined by the WHS Act, out of pocket expenses may include petty cash for food or transport to the volunteering location. Any payment of salary or wages, or over and above these out-of-pocket expenses, means that the person is not a volunteer for the purpose of the WHS Act.<sup>2</sup> For example, a director of a body corporate that receives money in directors’ fees is not a volunteer for the purpose of the WHS Act.

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<sup>1</sup> *Work Health and Safety Act 2011* (Qld) sch 5.

<sup>2</sup> WorkSafe Queensland, *Non-profit organisations and volunteers* (Web Page, 2 July 2018).

<<https://www.worksafe.qld.gov.au/laws-and-compliance/work-health-and-safety-laws/specific-obligations/non-profit-organisations-and-volunteers>>



## Volunteer officer

A **volunteer officer** is someone who makes or participates in decision making that impacts the businesses finances. This includes a member of a committee, a director, a company secretary or CEO of a not-for-profit organisation that is a person conducting a business or undertaking.<sup>3</sup>

## A person conducting a business or undertaking

A **person conducting a business or undertaking** (PCBU) is defined as a person conducting a *business* or *undertaking* alone or with others, and whether or not for profit or gain.<sup>4</sup>

A PCBU can be a:

- sole trader (e.g. a self-employed person);
- a partnership;
- company;
- a not-for-profit organisation;
- unincorporated association; or
- government department (including a local government).

The definition for PCBU in the WHS Act is intentionally broad to extend beyond the traditional employer and employee relationship to include modern working arrangements.

**A volunteer that carries out work in any capacity for a PCBU is considered a worker for the purposes of the WHS Act.** A not-for-profit organisation that employs at least one paid staff member is likely to be a PCBU e.g. a charity shop that employs a manager but is staffed by volunteers.

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<sup>3</sup> Safe Work Australia, 'Legislative fact sheet series: volunteer 'officers' and their duties under the model work health and safety act' (Fact sheet)  
<[https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.safeworkaustralia.gov.au%2Fsystem%2Ffiles%2Fdocuments%2F1702%2Fvolunteer\\_officers\\_and\\_their\\_duties.doc](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.safeworkaustralia.gov.au%2Fsystem%2Ffiles%2Fdocuments%2F1702%2Fvolunteer_officers_and_their_duties.doc)>

<sup>4</sup> *Work Health and Safety Act 2011* (Qld) sch 5.



Examples may also include local library volunteers, tourism or heritage preservation guides, and government volunteers, such as the Queensland State Emergency Service (SES).

### Volunteer association

A **volunteer association** is a “group of volunteers working together for one or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.”<sup>5</sup>

Volunteer associations are typically informal but can be incorporated e.g. junior sports club where the office bearers are volunteers and fund-raising and other activities of the club are carried out by volunteers, such as parents.

Volunteer associations also include groups such as community garden groups, neighbourhood clean-up or watch crews, and local animal rescues.

For the purposes of the WHS Act, a volunteer association is *not* a PCBU. **If a volunteer engages with a volunteer association, they are *not* considered a worker under the WHS Act.** In situations where a volunteer needs to hire a worker or contractor (e.g. to drive a bus on a day trip etc), this does not automatically make a volunteer association a PCBU.

## 3. Volunteers and workplace health and safety duties

### Volunteers working for PCBUs

As outlined above, if a person volunteers with a PCBU (e.g. a not-for-profit organisation), they are considered a worker under the WHS Act. Volunteers who carry out work for PCBUs are required to take reasonable care for their own health and safety and not to create risks to others.

Although occurrences have been rare, volunteer workers can be prosecuted for failing to comply with their duties. Prosecutions against workers are most likely only to occur in relation to serious incidents where there is a high degree of recklessness or negligence.

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<sup>5</sup> *Work Health and Safety Act 2011* (Qld) div 3 s 5.



The specific duties of volunteers who are considered workers under the WHS Act (i.e. volunteers who carry out work for a PCBU) are outlined below.

#### **Duties of workers**

The duties under section 28 of the WHS Act state that, while at work, workers are required to take reasonable care for their own health and safety and that of others who may be affected by their actions or omissions. They must also cooperate with any reasonable instruction given by the PCBU, and any reasonable policy or procedure of the PCBU to comply with the WHS Act and WHS Regulation.<sup>6</sup>

#### **Duties of other persons at the workplace**

The duties under section 29 of the WHS Act require any person at a workplace to take reasonable care of their own health and safety and those who may be affected by their actions or omissions. This includes cooperating with any actions taken by a PCBU to comply with the WHS Act.<sup>7</sup>

### **Volunteers and officers working for volunteer associations**

Under section 34 of the WHS Act, volunteers working for volunteer associations are exempt from prosecution for failing to comply with health and safety duties owed by a PCBU or an officer of a corporation or unincorporated association.

A volunteer officer cannot be prosecuted for failing to comply with their 'officer duties' under the WHS Act. This immunity from prosecution is designed to ensure that voluntary participation at the officer level is not discouraged. A volunteer officer can, however, be prosecuted in their capacity as a worker if they fail to meet their duties as a worker (see above).

This exemption covers offences such as industrial manslaughter, category 1 negligence or reckless conduct, and category 2 and 3 failures to meet health and safety obligations. However, this exemption does not apply to certain duties, which volunteers for PCBUs must still comply with, as they are classified as workers under the WHS Act.

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<sup>6</sup> Ibid s 28.

<sup>7</sup> Ibid s 29.



## 4. General Duties of PCBUs

PCBUs, including not-for-profit organisations that rely on volunteers, have duties to protect the health, safety and wellbeing of its volunteers.

The primary workplace health and safety duties imposed on PCBUs are in sections 19 to 26 of the WHS Act.

Each duty is subject to a ‘reasonably practicable’ test, which is defined in section 18 of the WHS Act as “what is, or was at a particular time, reasonably able to be done to ensure health and safety, considering and weighing all relevant factors.”<sup>8</sup>

These factors include:

- the likelihood of the hazard or risk;
- the potential severity of harm, what a person knows or should have known about the risk;
- the existing ability to eliminate or minimize the risk; and
- the costs involved in doing so.

This also means that when a PCBU is not directly supplying the object that presents a risk (whether it’s plant, systems, chemicals, or welfare facilities), the PCBU must still ensure the safety of these specific items or demonstrate that appropriate steps have been taken to verify their safety.

This approach allows compliance activities to be carried out by another party, while enabling the PCBU to verify that the necessary steps have been taken to fulfill their duties, even if they are not directly involved in sourcing, transporting, or supplying the materials or facilities.

[Providing and maintaining a work environment that is safe and without risks to health, including the entering and exiting of the workplace](#)

Providing and maintaining a safe work environment is a primary duty of care ascribed to PCBUs. The PCBU has a duty to ensure, so far as is reasonably practicable, the health and

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<sup>8</sup> Ibid s 18.



safety of workers that are directly engaged to carry out work, placed with another person to carry out work, or influenced or directed in carrying out their work activities by the person while the workers are at work in the business or undertaking.<sup>9</sup>

The changing nature of work relationships, particularly in the volunteering sphere, often means that those performing work activities do so under the direction of someone other than the head coordinator. For this reason, the WHS Act provides a broader scope for the primary duty of care to anyone who can control or influence the way work is done, to protect the health and safety of those carrying out the work.

#### Providing and maintaining plant, structure and systems of work that are safe and do not pose health risks

This duty requires the person in control of plant, structures, and systems to ensure, as far as is reasonably practicable, that these elements are free from risks to health and safety.

The duty also extends to “upstream” duty holders, including designers, manufacturers, importers, and suppliers of plant, structures, or substances that may impact the safety of these products before they are used in the workplace. These individuals have a responsibility, as far as is reasonably practicable, to ensure that these products do not pose risks to the health and safety of people working at or near the workplace.

#### Ensuring the safe use, handling, storage and transport of plant, structure and substances

A PCBU who supplies any plant, substance, or structure intended for use, or reasonably expected to be used, at a workplace must ensure that all activities related to the plant, structure, or substance (including its handling, storage, disposal, or dismantling) are free from risks to health and safety when used for their intended purpose.

Upstream duty holders are responsible for conducting tests and examinations, or ensuring that such tests have been carried out, to confirm that the supplied item is safe and does not pose any risk to health and safety.

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<sup>9</sup> Explanatory Notes, Work Health and Safety Bill 2011 (Qld).



### Providing adequate facilities for the welfare of workers at workplaces under their management and control

Facilities that are available, accessible and adequate must be provided by the PCBU.

In instances where the PCBU is removed from day-to-day management, the PCBU must actively verify that necessary facilities are available. Examples of facilities include washrooms, lockers, dining areas, toilets and handwashing facilities.

### Providing workers with information, instruction, training or supervision needed for them to work safely and without risks to their health

It is the duty of the PCBU to enable those who carry out work, including volunteers, to perform their roles safely and effectively. This includes providing access to relevant information through clear instructions, training, and supervision.

### Monitoring the health of their workers and the conditions of the workplace under their management and control to prevent injury or illness

Monitoring the health of workers and the condition of the workplace extends to all PCBUs whether they are located at the site or not. The primary duty of care is tied to work activities, wherever they occur.

### Maintaining any accommodation owned or under their management and control to ensure the health and safety of workers occupying the premises

The duty to maintain accommodation only applies to accommodation that is owned by or under the management or control of the PCBU, in circumstances where the occupancy is necessary for the purposes of the workers' engagement and other accommodation is not reasonably available.

When that duty exists, PCBUs must ensure that any accommodation provided to workers is free from risks to health and safety. This would involve maintaining the physical structure, such as checking for hazards like mould, faulty electrical systems, and ensuring the stability of the building.



Ensuring that the workplace, the means of entering and exiting the workplace, and anything arising from the workplace, do not affect the health and safety of any person

The expansion of the duties of a PCBU to anyone entering and exiting the workplace applies differently to PCBUs who own and control a workplace and those who occupy or manage a workplace. For example, owners of an office building are required to ensure people can enter and exit the building safely, whereas a tenant of the building is required to ensure people can enter their particular part of the building safely.

What is required in ensuring this safety ensures access points are free from hazards such as slip and fall risks and debris.

Ensuring that fixtures, fittings and plant do not affect the health and safety of any person

Where there is a management or control of fixtures, fittings or plant at a workplace, the PCBU must ensure, so far as is reasonably practicable, that those things are without risks to health and safety of any person. This includes, for example, slip and fall hazards such as lifted carpet or slippery tiles. This requirement extends to the decommissioning or dismantling of plant without risks to health or safety.

### Consultation

Aside from the primary duties prescribed in sections 19-26 of the WHS Act, section 47 of the WHS Act requires PCBUs to consult with their workers, including volunteers, about matters directly related to workplace health and safety.



## 5. Further resources

For further information, the below resources may assist:

- WorkSafe Queensland – Non-profit organisations and volunteers  
<https://www.worksafe.qld.gov.au/laws-and-compliance/work-health-and-safety-laws/specific-obligations/non-profit-organisations-and-volunteers>
- *Work Health and Safety Act 2011*  
<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2011-018>
- WorkSafe Queensland – Work health and safety laws  
<https://www.worksafe.qld.gov.au/laws-and-compliance/work-health-and-safety-laws>
- Safe Work Australia – Volunteer officers fact sheet  
<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.safe-workaustralia.gov.au%2Fsystem%2Ffiles%2Fdocuments%2F1702%2Fvolunteer-officers-and-their-duties.doc>
- Safe Work Australia – WHS duties  
<https://www.safeworkaustralia.gov.au/safety-topic/industry-and-business/volunteers/whs-duties>
- Safe Work Australia – Duties under WHS laws  
<https://www.safeworkaustralia.gov.au/law-and-regulation/duties-under-whs-laws>